IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 435 of 1999
in
CIVIL APPLICATION No 9783 of 1998
in
SPECIAL CIVIL APPLICATION No 10540 of 1994
with
CIVIL APPLICATION No 6881 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE RAVI R. TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHABHAI NARHARSINH MAHIDA

Versus

STATE BANK OF INDIA

Appearance:
MR IS SUPEHIA for Appellant
MR PRANAV G DESAI for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL

and

MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 06/02/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. Against the order made by the learned Single Judge on 8.3.99 in Civil Application No. 9783/98, the applicant-workman has preferred this appeal.

#. Learned Single Judge has observed that the workman was offered appointment by the respondent - Bank vide letter dated 9.1.95 as a part time sweeper on temporary basis. Even with regard to the back wages, in application under section 17-B of the Industrial Disputes Act (hereinafter to be referred to as "the Act"), the learned Single Judge has directed that the workman be paid full backwages from 18.4.94 to 9.1.95. With this direction, the application was disposed of.

#. State Bank of India - original petitioner in Special Civil Application No. 10540 of 1994 made a grievance about the award drawn by the Industrial Court. At the time of admission, the Court passed the following order.

"The State Bank of India has preferred this Special Civil Application against the award passed by the Industrial Tribunal, Baroda. The finding recorded is that the workman has served 203 days only. The Tribunal has come to the conclusion that it is not a case of retrenchment. The question referred was whether the action of the management of the State Bank of India, Regional Office, Baroda in terminating the services of Shri B.N. Mahida is legal and justified? If not, what relief the workman is entitled to? The Tribunal has directed to reinstate the applicant in the regular service of the bank as messenger with effect from 1.1.1990 with back wages and with a further direction to pay arrears.

Heard the learned advocate. Rule. Interim relief in terms of para 11(b), however, if the workman is otherwise entitled to be appointed as per the list prepared and if otherwise qualified, he shall be appointed."

It seems that thereafter the Special Civil Application was disposed of against which the present appellant preferred L.P.A. 1273/97. Division Bench of this Court allowed the appeal with the hope to have an opportunity to the parties to agitate their grievances. The appeal was allowed without expressing any opinion on merits regarding the contentions raised by the parties as the mater was required to be decided afresh. It seems that the appellant made a grievance that section 17-B of the Act is not being followed and therefore, the Court at that stage observed that the appellant will be at liberty to press his claim under section 17-B of the Act. It is thereafter on behalf of the present applicant, an application was preferred and the learned Single Judge on 8.3.99 passed an order which has been referred to hereinabove.

#. So far as the dispute is concerned, it appears that the applicant worked for 203 days only from November, 1981 to March, 1983. Attempts at the conciliation failed and the Desk Officer, Ministry of Labour, Govt. of India, New Delhi passed an order dated 16.8.91 and referred the following issue for adjudication to the Tribunal.

> "Whether the action of the management of State Bank of India, Regional Office, Baroda in terminating the services of Shri B.N. Mahida, is legal and justified? If not, to what relief the workman is entitled?"

It is contended on behalf of the Bank that the Tribunal has exceeded its jurisdiction; That limited question was required to be decided, however, the Tribunal posed the question whether the action of the Bank in not declaring the result of the interview of the applicant held in October, 1989 is legal and justified and if it is unjustified, then to what relief the applicant is entitled to. So far as issue no. (i) is concerned, the Tribunal held as under.

> "Therefore, by no stretch of imagination it can be said that the applicant was ever retrenched. Therefore, this is not a case of retrenchment, either, I therefore hold issue no. (i) in the negative."

The applicant was not in continuous service. He worked

only for 203 days and the aforesaid finding is recorded. So far as other issues are concerned, the Tribunal has proceeded on the basis that the Bank ought to have declared the result within a reasonable time i.e. upto 1.1.90 and since the Bank withheld the result for unjustified reasons, the applicant is entitled to be reinstated in service w.e.f. 1.1.90 with back wages. It seems that the Tribunal has not considered the settlement arrived between the parties under section 2(P) of the Act. The Tribunal has considered the case of one Mahendra Pandya who was appointed temporarily as a Messenger about one month after the applicant was appointed and has been regularised in service though he had completed 24 years on the date of his first appointment. The Tribunal has not bothered to verify whether workman has completed more than 240 days or not. In a given circumstance, if a workman has completed 240 days, he may stand on a stronger footing than the workman who might have been engaged earlier but who may not have completed 240 days. That apart, the Tribunal ought to have called upon the Bank to explain as to why the result was not declared; Whether he failed in the test or not was the real question to be posed. The Tribunal has not done that. Moreover, the agreement under section 2 (P) of the Act is placed on record. Clauses (xi) and (xii) are relevant which are reproduced here as under.

"(xi) CASES OF INDUSTRIAL DISPUTES :

Clause 12 of the Agreement dated 17.11.1987 relates to pending cases of industrial disputes. Where a dispute has been raised by an affiliate of the Federation or a daily wager or anybody else in regard to the matters detailed in the Agreement dated 27.10.1988 and Settlement dated 9.1.1991 and the same is pending before an Industrial Tribunal/Labour Court for adjudication or Assistant Labour Commissioner (ALC) for conciliation, a copy each thereof may be filed before the Conciliation/Presiding officer: he should be requested to pass an order that the dispute has been settled in terms of the Agreements : The Agreements provide for giving a chance to eligible daily wagers for being considered for permanent appointment.

(xii) Where an Award or a Judgment has been passed by Industrial Tribunal/High Court that the daily wager disputant has to be reinstated in service with or without back wages on the ground that Section 25G and/or 25H of the Industrial Disputes

Act, 1947 has not been complied with and the matter is pending in appeal in High Court/Supreme Court, efforts should be made to file the above settlements (dated 27.10.1988 and 9.1.1991) in the court where the matter is pending and a request be made to the court to pass a judgment on terms of the settlement."

It seems that these aspects have not been considered. Again, it is required to be noted that once the workman was offered and he has refused, then in our view, it cannot be said that he is entitled to the relief under section 17-B of the Act.

#. So far as the prerequisite/requirements for invoking section 17-B are concerned, the same are as under.

(i) Award of the Tribunal should have directed reinstatement of the workman on setting aside the order of his dismissal or unfair termination of service.

(ii) Employer should have preferred proceedings against such award before the High Court or Supreme Court.

(iii) Workman should not have been gainfully employed in any establishment during the pendency of the proceedings.

(iv) As a proof of that, workman should have filed an affidavit before the Court before which the proceedings have been preferred.

#. In our opinion, when the Tribunal arrived at a conclusion that there is no wrongful termination and in the instant case when workman was offered and yet he has refused to accept the offer, we are of the view that section 17-B of the Act cannot be pressed into service. Mr. Supehia states that his client reported for duty and the Bank has not permitted him to join the duties. Suffice it to say that as per the settlement, even if the workman is prepared to work now, the Bank should allow him to join the duties as offered by it earlier.

#. In view of the above, the appeal stands dismissed. The Civil Application also stands rejected. Interim

relief granted earlier stands vacated.

*****

pirzada/-